

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0753  
99-0027**

**Sales/Use Tax—Vehicle Lease Transactions  
For Tax Periods: 1995 through 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales/Use Tax—Vehicle Lease Transactions**

**Authority:** IC 6-8.1-5-1(b)

Taxpayer protests the assessment of Indiana sales tax on the trade-in allowances given to its customers in lease transactions.

**II. Tax Administration—Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-1; 45 IAC 15-11-2

Taxpayer protests assessment of a ten percent (10%) penalty.

**STATEMENT OF FACTS**

Taxpayer, an automobile dealership, sells and services new and used automobiles. Taxpayer also negotiates automobile leases with its customers. Audit and taxpayer are in disagreement as to the amount of sales tax that should have been collected by taxpayer in its vehicle leasing arrangements. Taxpayer protested the assessment and penalty and waived the administrative hearing. This letter of findings is written based on the information in the file. Further facts will be provided as necessary.

**I. Sales/Use Tax—Vehicle Lease Transactions**

### **DISCUSSION**

As part of its automotive leasing business, taxpayer negotiates lease agreements with its customers. In arriving at the selling price of a leased vehicle, the final cost to the customer is partially offset by any capital cost reductions (down payments). These down payments usually represent cash tendered, manufacturer's rebates, and any trade-in allowances. Taxpayer collected sales tax on the cash tendered and on the value of the manufacturer's rebates. Taxpayer, however, did not collect sales tax on the trade-in allowances. Audit has concluded that the taxpayer should have collected and remitted sales tax on the trade-in allowances.

Pursuant to Indiana Code Section 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer protested the assessment but did not offer any evidence that the assessment is invalid. As such, the taxpayer failed to meet the burden imposed by IC 6-8.1-5-1(b).

### **FINDING**

Taxpayer's protest is denied.

## **II. Tax Administration—Penalty**

### **DISCUSSION**

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent in nature.

Departmental regulation 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . ."

In this instance, the taxpayer has not shown reasonable cause. Taxpayer protested the assessment but did not offer any evidence that the penalty is invalid.

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**FINDING**

Taxpayer's protest is denied.

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